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September 26, 1995

DOCKET FILE COPY ORIGINAL

Mr. William F. Caton
Acting Secretary
Federal Communications Commission
1919 M Street NW, Room 222
Washington, D.C. 20554

Re: Opposition of Petitions for Reconsideration of Sixth Report and Order and Eleventh Order on Reconsideration

Dear Mr. Caton:

Enclosed for filing in the proceeding referenced above is the original and 11 copies of our Opposition of Petitions for Reconsideration of the Commissions's Sixth Report and Order and Eleventh Order on Reconsideration, MM Docket Nos. 92-266 and 93-215.

Sincerely,

A handwritten signature in dark ink, appearing to read "Robert J. Erickson". The signature is fluid and cursive, with the first letters of the first and last names being capitalized and prominent.

Robert J. Erickson
Senior Vice President

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Before the
FCC MAIL ROOM FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C.

In the Matter of:

MM Docket 92-266

the Cable Television Consumer
Protection and Competition
Act of 1992: Rate Regulation

MM Docket 93-215

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OPPOSITION OF PETITIONS FOR RECONSIDERATION OF THE SIXTH REPORT
AND ORDER AND ELEVENTH ORDER ON RECONSIDERATION

Summit Communications, Inc., a Washington corporation ("Summit"), hereby submits its opposition of the Petitions for Reconsideration ("Petitions") in the proceedings captioned above. Summit is opposing hereby the Petitions filed by the Georgia Municipal Association and the New Jersey Board of Public Utilities regarding certain rules issued as part of the In re Implementation of Sections of Cable Television Consumer Protection and Competition Act of 1992: Rate Regulation, Sixth Report and Order and Eleventh Order on Reconsideration (MM Docket Nos. 92-266 and 93-215), FCC 95-196 (released June 5, 1995) ("Sixth Report and Order"). Summit urges the Federal Communications Commission ("Commission") to retain these rules in their present form.

Summit is a small cable operator within the meaning of the new rules established in the Sixth Report and Order. Summit believes that the new rules governing small operators are essential to the economic well-being of small operators and that they make the playing field of regulation more level.

The primary objection of the two parties filing the Petitions seems to be that allowing small operators to base their rates upon actual costs is somehow unfair to customers. The Petitions beg the question by implying that the very act of regulation itself results in so-called fairness, notwithstanding the harm being done to the operator. Neither of the two petitioners seem to be considering the economic viability of the cable operator in their Petitions.

Summit believes that the rules provide a reasonable cost-effective method of regulating the rates of small operators. The fact that small operators may apply the rules to matters pending as of June 5, 1995 does not create an "unfair advantage" as the New Jersey Board states on the first page of its Petition. In fact, applying the rules to pending matters will avoid the unfair advantage local franchising authorities have had since regulation began. Furthermore, if the new rules apply to pending proceedings, both cable operators and local franchising authorities will avoid the embarrassment of dealing with refund orders pursuant to the old rules and

subsequent rate increases pursuant to new Form FCC 1230. Customers will be spared the confusion of trying to deal with the seemingly inconsistent actions of the regulators and cable operators.

The New Jersey Board complains that operators will be able to increase their rates unless the local franchising authorities are able to overcome the presumption of reasonableness to which small operators are entitled. The Board also points out that in some cases, the application of these rules will moot previous settlement discussions. These statements may be true, but Summit fails to see the harm here. The new rules allow cable operators to establish rates based on cost. The new rules do not require the operator to increase its rates to the maximum allowed; they merely provide a reasonable framework for the operator to recover its actual cost of service.

Summit has elected to file a Form FCC 1230 in its only open rate proceeding. In that case, Summit and the local franchising authority were negotiating regarding the initial rates to be charged and the amount of the refund liability resulting from the initial filing of the Form FCC 393. At all times Summit believed that its rates were fair and reasonable based upon the actual costs of the system in question. Summit was choosing the negotiating process because the cost-of-service rules originally issued by the Commission contained many open questions and the hazards of litigation were material. Summit also wanted to avoid a protracted legal fight and wanted to make the rate-setting process less adversarial and less costly to all concerned.

Both the local franchising authority (i.e., the taxpayer-customers) and Summit (i.e., the customers) had devoted valuable resources to the initial rate-setting process. This is a fact of life in the complex world of cable television rate regulation. The Commission should not change the rules merely because some parties will be able to utilize the new rules. In Summit's situation, the actual rate being charged is substantially below the maximum permitted rate as shown on the Form FCC 1230, which in turn is substantially below the Commission's presumed reasonable rate of \$1.24 per channel. Summit has no intention of raising its rate to the amount shown on the Form FCC 1230. However, if the new rules were not available for the matter pending on June 5, 1995, Summit would be forced to agree to an unwarranted refund or pursue its administrative remedies at even more cost to the parties involved. Given its financing obligations, Summit would then be forced to raise rates, at least long enough to recover the cost of the refunds. Summit believes that this would be a ludicrous result, leaving the Commission, Summit and the local franchising authority red-faced and its customers unpleasantly confused.

In these real-life contexts, it seems that the interests of the taxpayer-customers would be better served by allowing the new rules to be applied to pending matters. The customers will not see roller-coaster-rates, and they will not be paying more than the cost of service showing on the Form FCC 1230 warrants.

Finally, undoing the application of the new rules to matters pending as of June 5, 1995 would be costly as well. Cable operators and local franchising authorities have already invested substantial additional resources to learn the new rules and apply them to existing proceedings. Furthermore, cable operators have made good-faith financial commitments based upon the application of the rules to pending matters. Small operators who have already faced substantial economic hardship as a result of re-regulation will face additional unnecessary hurdles. Simple fairness requires that the rules stand.

Respectfully submitted,

Summit Communications, Inc.

By: 

Robert J. Erickson

Its Senior Vice President

AFFIDAVIT OF SERVICE

On September 26, 1995, I caused to be mailed via First Class Mail, Summit Communications' Opposition of Petitions for Reconsideration of the Commissions's Sixth Report and Order and Eleventh Order on Reconsideration, MM Docket Nos. 92-266 and 93-215 to the following:

Georgia Municipal Association
201 Pryor Street SW
Atlanta, GA 30303

New Jersey Board of Public Utilities
%Attorney General of New Jersey
Division of Law - 5th Floor
124 Halsey Street
PO Box 45029
Newark, NJ 07101

Per Exhibit A hereto, attached

The foregoing statements made by me are true and correct to the best of my knowledge and belief.

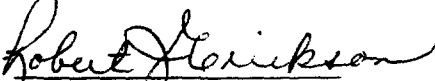

Robert J. Erickson

EXHIBIT A TO AFFIDAVIT OF SERVICE

Antietam Cable Television
1000 Willow Circle
Hagerstown, MD 21740

Avenue TV Cable Service, Inc.
1954 East Main Street
Ventura, California 93002-1458

Community Antenna Television, Inc.
3950 Chain Bridge Road
P.O. Box 1005
Fairfax, VA 22030

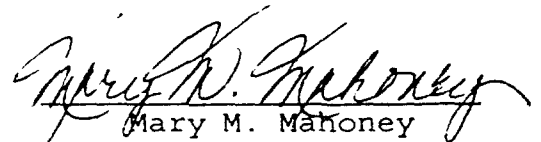
National Cable Television Association
1724 Massachusetts Avenue, N.W.
Washington, D.C. 20036

National Telephone Cooperative Association
2626 Pennsylvania Avenue, N.W.
Washington, D.C. 20037


Small Cable Business Association
c/o David D. Kinley, Chariman
Kinley and Associates
7901 Stoneridge Drive - Suite 404
Pleasanton, California 94588

U.S. Small Business Administration
P.O. Box 34500
Washington, D.C. 20043-4500

I swear that the foregoing statements made by me are true.
I am aware that if any of the foregoing statements are wilfully false,
I am subject to punishment.


Mary M. Mahoney

Sworn to and subscribed
before me this 15th day
of August, 1995


CHARLES S. COHEN
An Attorney-at-Law of the
State of New Jersey